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10/572,965	03/21/2006	Fabrice T. P. Saffre	36-1968	4560
23117 7590 12/06/2010 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
HUYNH, KHOA B				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/572,965

Applicant(s)

SAFFRE, FABRICE T. P.

Examiner

KHOA HUYNH

Art Unit

2462

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 and 18 is/are allowed.
- 6) ☒ Claim(s) 11-17 and 19 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to the Applicants' amendment received on 09/09/2010.

Claim Status

2. Claims 3, 11-13, 17 are amended.
3. Claims 18-20 are newly added.
4. Claims 3, 11-20 are currently presenting for examination, with claims 3, 11, 12, 18, and 19 being independent.
5. This action has been made **NON-FINAL**.

Response to Arguments

6. Applicants' arguments filed 09/09/2010 have been fully considered but are moot in view of the new ground(s) of rejection.
7. The followings are Examiner response to applicants' arguments.
8. According to Applicants' representative on 11/29/2010, Applicants declined Examiner's proposed amendment to put the application in condition for allowance and preferred Examiner to send out an office action, as thus this non-final action is being issued.

9. First of all, Examiner would like to express gratitude to Applicants' representative for the time spent on writing such detailed response which superbly clarified a lot of vague aspects of the claimed invention.
10. Applicant's representative's amendment to the claims and arguments regarding the 112, 1st and 2nd paragraphs rejections are persuasive, as thus the 112, 1st and 2nd paragraphs rejections are withdrawn.
11. Applicant's representative's argument regarding Marsh as being not qualify as prior art against the present application is persuasive; however the claims are now rejected under a different art, Singer. As thus, the action is made non-final.
12. The referenced citations made in the rejection(s) are intended to exemplify areas in the prior art document(s) in which the Examiner believed are the most relevant to the claimed subject matter. However, it is incumbent upon the applicant to analyze the prior art document(s) in its/their entirety since other areas of the document(s) may be relied upon at a later time to substantiate examiner's rationale of record.
13. Therefore, in the next response, Examiner would appreciate it if Applicants' representative could clearly point out any other patentable novelty, beside what is already indicated as allowable subject matter by Examiner, that he or she thinks the claimed invention presents in view of the state of the art disclose by the references as a whole.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. **Claims 11-13, 16-17, 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Amalfitano, US 2001/0033557 in view of Singer, US 6,789,115 and Otis US 6,085,241.

17. **For claim 11, 12, 19.** Amalfitano teaches: A method / apparatus of controlling access to a communications resource in which capacity made available to each of a plurality of users is limited to a maximum value (Amalfitano, page 1, paragraph 8, lines 8-15 describes such method), said method / apparatus comprising:

using a measuring means / computer server to obtain a measurement of usage that each member of the plurality of users made of the resource over a predetermined period, (Amalfitano, fig 2, page 3, paragraph 40, usage of each user over a period is being measured)

using a sorting means / the computer server to place each member of the plurality of users that currently have active connections to the resource in a rank order relative to one another, the ranking being made according to the measurements, made using the measurement means, of the usage that each member made of the resource, (Amalfitano, page 3, paragraph 37-41, users are given priorities based on usage)

using a calculating means / the computer server to apply a restriction factor to each user according to that user's position in the rank order and how many users currently have active connections, (Almalfitanio, page 3, paragraph 43 to page 4, paragraph 58 discussions how restriction factor are applied to user according to priorities)

thereby restricting availability of the resource to each of the plurality of users that currently have active connections to the resource, (Almalfitanio, page 3, paragraph 41, since requests for access are queued, only users that put in requests for access are allocated resource)

Even though Amalfitano briefly mentions that users are given priorities based on usage, Amalfitano doesn't distinctly teach ranking users relative to one another based on usage

Singer from the same or similar fields of endeavor teaches: ranking users relative to one another based on usage (Singer, fig 14, users are ranked based on usage)

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the teachings of Singer into Amalfitano, since Amalfitano suggests a technique for controlling access to resource to resource based usage, and Marsh suggests the beneficial way of including ranking users based on such usage in such technique (Singer, fig 14) in order to provide fair and efficient resource distribution to users in the analogous art of communication.

Even though Amalfitano briefly mentions about an apparatus for performing the above technique, Amalfitano doesn't distinctly teach the various means / computer server for performing the technique

Otis from the same or similar fields of endeavor teaches: various means / computer server for performing the technique (Otis, fig 1, 2, column 4, lines 16-19, column 5, lines 32-35, shows system contains various means such as bandwidth manager 10, CPU 11... for performing the technique;)

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the teachings of Otis into Amalfitano and Singer, since Amalfitano suggests a technique for controlling access to resource to resource, and Otis suggests the beneficial use of bandwidth manager and CPU to implement such technique (Otis, column 4, lines 16-19, column 5, lines 32-35) since it is well-known in the art to use bandwidth manager to measure resources and CPU to perform calculation in the analogous art of communication.

31. **For claim 13.** Amalfitano, Singer and Otis disclose all the limitations of claim 11, and Amalfitano further teaches: in which the restriction factor allocated to a user having made a least usage over a previous predetermined period is unity. (Amalfitano, page 4, paragraph 56, for two priority levels, restriction factor allocated to user having made the least usage is $x=1.08$, as the number of priority levels increases, x will go to 1, unity)

32. **For claim 16.** Amalfitano, Singer and Otis disclose all the limitations of claim 11, and Amalfitano further teaches: in which each user is given a unique ranking. (Amalfitano, page 1, paragraph 8, assigning priority levels to users based upon usage's history, user's priority level is unique with respect to users of other priority levels)

33. **For claim 17.** Amalfitano, Singer and Otis disclose all the limitations of claim 12, and Amalfitano further teaches: in which the sorting means is arranged to give a unique ranking to each said user having an active connection. (Amalfitano, page 1, paragraph 8, assigning priority levels to users based upon usage's history, user's priority level is unique with respect to users of other priority levels)

34. **Claims 14 and 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Amalfitano, US 2001/0033557 in view of Singer, US 6,789,115 and Otis US 6,085,241 and further in view of Chuah US 6,567,416.

35. **For claim 14.** Amalfitano, Singer and Otis disclose all the limitations of claim 12, however Amalfitano, Singer and Otis fail to teach: associated with a modem associated with a server controlling access to the internet.

Chuah from the same or similar fields of endeavor teaches: associated with a modem (Chuah, fig 1 element 4, modem is associated with the network) associated with a server controlling access to the internet (Chuah, fig 1, element 14: server is capable of controlling access to the internet 20)

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the teachings of Chuah into Amalfitano, Singer and Otis, since Amalfitano suggests a technique for controlling access to resource, and Chuah suggests the beneficial use of modem and server when implementing such technique since this configuration is "typically utilized today to provide remote internet access through modems to user computers" (Chuah, column 1, lines 38-40) in the analogous art of communication.

36. **For claim 15.** Amalfitano, Singer and Otis disclose all the limitations of claim 12, however Amalfitano, Singer and Otis fail to teach: associated with a switching system for controlling access to an internet service provider.

Chuah from the same or similar fields of endeavor teaches: associated with a switching system for controlling access to an internet service provider (Chuah, fig 1, element 6: PSTN, public switch telephone network controls access to element 10: ISP, internet service provider)

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the teachings of Chuah into Amalfitano, Singer and Otis, since Amalfitano suggests a technique for controlling access to resource, and Chuah suggests the beneficial use of switching system when implementing such technique since this configuration is "typically utilized today to provide remote internet access through modems to user computers" (Chuah, column 1, lines 38-40) in the analogous art of communication.

Allowable Subject Matter

37. Claims 3, 18 are allowed.
38. Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KHOA HUYNH whose telephone number is (571) 270-7185. The examiner can normally be reached on Monday - Friday: 10:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SEEMA RAO can be reached on (571) 272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Seema S. Rao/
Supervisory Patent Examiner, Art
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Examiner, Art Unit 2462